

JOHN SWANSON

IBLA 80-315

Decided December 15, 1980

Appeal from the decision of the Wyoming State Office, Bureau of Land Management, declaring oil and gas lease W 25836 terminated by operation of law.

Set aside and remanded.

1. Oil and Gas Leases: Termination -- Oil and Gas Leases: Well Capable of Production

An oil and gas lease which is in its extended term by reason of production terminates by operation of law when it is determined that the lease no longer has a well capable of production in paying quantities and no approved reworking or drilling operations are commenced within 60 days of cessation of production.

2. Hearings -- Notice: Generally -- Oil and Gas Leases: Termination -- Oil and Gas Leases: Well Capable of Production -- Rules of Practice: Hearings

Upon a determination that production has ceased on an oil and gas lease in its extended term by reason of such production because the well on the lease is no longer capable of production in paying quantities, the lessees of record are entitled to notice and an opportunity to request a hearing on the issue of the productive capacity of the well where they have presented evidence raising an issue of fact regarding the status of the well.

APPEARANCES: Richard A. DeZengremel, Esq., Englewood, California, for appellant.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

John Swanson has appealed the decision of the Wyoming State Office, Bureau of Land Management (BLM), dated December 21, 1979, declaring that oil and gas lease W 25836 terminated by operation of law as of July 31, 1979. Swanson is the operator of the John Swanson Well No. 2 on the lease. ^{1/}

In March 1977 the Geological Survey (Survey) terminated the Summerville II Unit Agreement, No. 14-08-0001-16027, governing various oil and gas leases in Johnson County, Wyoming, effective February 28, 1977. The leases released from commitment to the unit plan included oil and gas lease W 25836, the rights to which were held by Sun Oil Company, Phillips Petroleum Company, and Davis Oil Company. Pursuant to 43 CFR 3107.5, this lease was to continue in effect until February 28, 1979, and so long thereafter as oil or gas was produced in paying quantities.

On November 2, 1978, Survey approved a permit submitted by operator John Swanson to drill a well on the lease under the bonds of the lease holders. Thereafter, Survey notified the Bureau of Land Management that the John Swanson Well No. 2 was completed as a producing well on February 28, 1979, and recommended that a decision as to termination of the lease be held in abeyance until a determination as to whether the well would produce in paying quantities could be made.

In November 1979 Survey notified BLM that the district engineer had determined that lease W 25836 was not capable of producing oil and gas after July 31, 1979, and that no approved operations to restore production were begun within 60 days as allowed by 43 CFR 3107.3-1, and therefore the lease terminated by operation of law as of July 31, 1979. In a December 1979 memorandum Survey added that Swanson had submitted notices showing well production of only 10 barrels of oil and 132 barrels of water during July 1979, but that he had not filed required reports as requested or accepted certified letters from Survey. A Survey technician inspected the lease and found production equipment but no operations. Survey also reported that the lessees had orally advised that they would probably abandon the well.

^{1/} United Bank of Denver originally filed a notice of appeal to the decision indicating that it held an interest in the lease pursuant to a mortgage, security agreement, assignment of proceeds and financing statement, dated July 9, 1979, from John Swanson. After investigation, however, United Bank informed the Board that it would not pursue the appeal and withdrew.

By letter decision dated December 21, 1979, BLM held the lease to have terminated as of midnight July 31, 1979.

In his statement of reasons, appellant reveals that he has been in financial difficulty, and that the reports required by Survey were not properly filed because his attorney who was handling them became ill and died. He argues that tests termed satisfactory by the field men had been done on the lease, the well was productive, and it could be profitable if properly treated. Finally, he urges that when he became operator the lease was in a state of disarray, he put it in good order, and he is ready and able to get the lease into production.

[1] An oil and gas lease which is in its extended term by reason of production terminates by operation of law when it is determined the lease no longer has a well capable of production in paying quantities and no approved reworking or redrilling operations are commenced within 60 days of cessation of production. Robert Hawkins, 45 IBLA 105 (1980); John S. Pehar, 41 IBLA 191 (1979); Universal Resources Corp., 31 IBLA 61 (1977); 30 U.S.C. § 226(f) (1976); 43 CFR 3107.3-1. Therefore, if the Survey determination with respect to the producing status of the well is correct, the decision below must be affirmed.

However, as we noted, appellant has asserted that the well was and is capable of producing in paying quantities. Although the facts in the case record do not clearly establish that such is true, the Survey recommendation and BLM decision terminating the lease as of July 31, 1979, rather than at the end of the lease term on February 28, 1979, support the suggestion that there was a well capable of production in paying quantities at one time. If no such well ever existed, BLM should have terminated the lease as of the end of its term. However, if there was a well capable of producing in paying quantities, the lease shall not expire because the lessee fails to produce unless the lessee fails to place the well on a producing status within 60 days after receipt of notice to do so from the Area Oil and Gas Supervisor. 43 CFR 3107.3-2.

[2] We have held that upon a determination that production has ceased on an oil and gas lease in its extended term by reason of production because the well on the lease is no longer capable of production in paying quantities, the lessees of record are entitled to notice and an opportunity to request a hearing on the issue of the productive capacity of the well where they have presented evidence raising an issue of fact regarding the status of the well. Universal Resources Corp., supra. In this instance we also find it appropriate to remand to the State Office for referral to Survey. Appellant should submit his evidence to Survey and the lessees. If Survey determines after review of this additional evidence and any comments of the lessees that there is no well capable of production in paying quantities on the lease, due notice shall be given to appellant and

the lessees by the BLM State Office advising them of the basis of the determination and that they may request a hearing before an Administrative Law Judge on the issue of the existence of a well capable of producing in paying quantities. If a hearing is requested, the case shall be transmitted to the Hearings Division, Office of Hearings and Appeals.

At the hearing the burden of going forward with the evidence and the ultimate burden of proof falls on the appellant and/or the lessees who must establish the existence of a well capable of production in paying quantities. We note that a well capable of producing oil and gas in paying quantities must actually be physically capable of such production at the time in question. Future expectations as to the well and present assessments regarding potential for production from the well based on inferences drawn from present data are to be distinguished from the present status of the well as one capable of producing in paying quantities. Universal Resources Corp., *supra* at 67-68, and n.4; The Polumbus Corp., 22 IBLA 270, 271-73 (1975).

Therefore pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is set aside and remanded for further action consistent herewith.

James L. Burski
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Douglas E. Henriques
Administrative Judge

